

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4732 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DOSHJIBHAI DHANJIBHAI PATEL SINCE DECEASED THRO' HEIRS

Versus

STATE OF GUJARAT  
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Appearance:

MS KUSUM M SHAH for Petitioners

RULE SERVED BY DS for Respondent No. 1, 3, 4, 5, 6

GOVERNMENT PLEADER for Respondent No. 2  
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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/09/2000

ORAL JUDGEMENT

The petitioner, by this application under Article 227 of the Constitution of India, prays for issuance of a Writ of Certiorari or any other appropriate Writ quashing the order of the Special Secretary (Appeals), Revenue Department, confirming the orders passed by the Deputy Collector and the Collector, copies of which are produced at Annexure-B and Annexure-C.

2. The respondent NO.4, the Karta of the Joint Hindu Family, in order to meet with the marriage expenses of the family members, had taken the loan from the petitioner to the tune of Rs.12000/-. In turn he mortgaged the land bearing Survey No.119/1, Block Number of which is 288 situated within the sim of village Kunbharmer, the total area of which is 4 Acre and 17 Gunthas. The petitioner was then put into the actual possession of the land. The petitioner has been cultivating the said land since 27th June, 1977, the day on which the document in that regard was executed. As per one of the conditions of the mortgage transactions, on payment of Rs.12,000/- back, the petitioner had to reconvey the land, but the respondent Nos. 4 to 6 failed to make the payment. Considering their inability to pay, they settled the dispute and agreed to sell 3 Acres of land out of the total area to the petitioner for Rs. 12,000/- waiving all their right, title and interest over it. A Regd. Sale Deed on 13th March, 1981 was then executed in favour of the petitioner. On 19th July, 1988, the Deputy Collector having come to know about the said sale transaction issued a notice calling upon the parties to show cause why the land should not be forfeited to the Government, as the same was sold without prior permission. According to the Deputy Collector, prior permission for sale was necessary because the land in question was of a new tenure land. After hearing the parties, he forfeited the land to the Government. Against that, the petitioner preferred an Appeal before the Collector who also confirmed the order passed by the Deputy Collector. A revision application was then preferred by the petitioner which also came to be rejected. This present petition is, therefore, filed calling in question the legality and validity of the orders passed by the authorities.

3. It may be mentioned at this stage that at the time of admission on 22nd July, 1991, the learned advocate representing the petitioner made it clear that this petition was confined to the only issue namely regularisation of the transaction affected in favour of the petitioner.

4. After unreasonable length of the time, the Deputy Collector initiated the proceedings which is highly unjust and arbitrary, because at one's own sweetwill the authority cannot initiate any action. The Circulars dtd. 11th June, 1968 and 13th July, 1983 are not correctly taken into account. The transaction could have been regularised on payment of the sums equal to 20 times the assessment and converting the land into old tenure land.

The law on transfer of land is not correctly construed and without application of mind, the transaction is stamped unauthorised. The forfeiture is bad in law. Many of such transactions are regularised, but the petitioners are not treated equally in law. Such is the submission made.

5. A perusal of the impugned order shows that the order having been passed ignoring the Circulars referred to above, is arbitrary and unreasonable, and extraneous consideration has influenced the authority. Hence for doing complete justice, the order passed by the lower Forums must be interfered with and necessary direction must be given to the Collector as the petitioners are going to submit their representation.

6. For the aforesaid reasons, this application is allowed. The impugned orders are hereby quashed and set aside. The matter is referred back to the Deputy Collector, Palanpur with direction to consider the representation of the petitioner to be filed within a period of one month from today and shall within a period of three months after the receipt of the representation decide the same in accordance with law, considering the above said two Circulars and law applicable. The parties to maintain status-quo till representation is filed. The Collector, if the petitioners move for interim relief, shall also consider the same and pass appropriate order in that regard. Rule accordingly made absolute.

7. The copy of the Circular dtd. 13th July, 1983 tendered by the learned A.G.P. at this stage be taken on record.

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